

The opinion in support of the decision being entered  
today is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DAVID A. NOVAIS  
and JOHN R. FREDLUND

Appeal 2007-2215  
Application 09/918,287<sup>1</sup>  
Technology Center 2600

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**MAILED**

**JUN 28 2007**

**PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Decided: June 28, 2007

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Before JAMESON LEE, RICHARD TORCZON, and SALLY C. MEDLEY,  
*Administrative Patent Judges.*

LEE, *Administrative Patent Judge.*

DECISION ON APPEAL

1 A. Statement of the Case

2  
3 This is a decision on appeal by an applicant under 35 U.S.C. § 134(a) from a  
4 rejection of claims 1-16 of application 09/918,287. We have jurisdiction under  
5 35 U.S.C. § 6(b).

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6  
<sup>1</sup> The real party in interest is Eastman Kodak Company.

Reference Relied on by the Examiner

Blank	US Patent 5,469,536	Nov. 21, 1995
Shniberg	US Pub. App. 2002/0085762	July 04, 2002
Showghi	US Patent 6,473,739	Oct. 29, 2002
Gluck	US Patent 6,532,345	Mar. 11, 2003
Weston	US Patent 6,608,563	Aug. 19, 2003

The Rejections on Appeal

The Examiner rejected claims 1-7 under 35 U.S.C. § 102(e) as anticipated by Weston.

The Examiner rejected claims 8-15 under 35 U.S.C. § 103(a) as unpatentable over the combined teachings of Blank, Gluck, and Shniberg.

The Examiner rejected claim 16 under 35 U.S.C. § 103(a) as unpatentable over Blank, Gluck, and Showghi.

B. Issue

Have the Applicants shown error in the rejection of claims 1-16?

C. Summary of the Decision

The Applicants have shown error in the rejection of claims 1-7 but not in the rejection of claims 8-16.

D Findings of Fact (Referenced as FF. ¶ No.)

1. The invention is directed to a process of offering imaging services to a customer who attends an entertainment event and whose attendance at the event is associated with a fixed seating location, where the images include images of participants in the entertainment event and images of the customer viewing the event. (Specification 2, ll. 7-17).

2. In the process recited in independent claim 1, an imaging service is selected by the customer, an identification code is assigned to the customer

1 selection, and the code includes “information on the selected imaging service and  
2 information inputted by the customer on seating location of the customer at the  
3 entertainment event.”

4 3. In the process recited in independent claim 16, images are displayed  
5 to a customer at an entertainment event on an interactive display screen accessible  
6 at the customer’s seating location, and an interactive selection session is offered to  
7 the customer to permit the customer “while seated at the seating location, to select  
8 a desired image or images from the displayed images and select a desired image  
9 product representative of the desired image or images.”

10 4. The invention is also directed to an imaging service kiosk which  
11 includes an imaging service display section and a customer input section through  
12 which a customer may select one of the displayed imaging services and enter  
13 information representative of his or her seating location at an entertainment event,  
14 and the selected imaging service includes creating images having at least one  
15 image of participants in the event and at least one image of the customer viewing  
16 the event. (Specification 2, ll. 18-26).

17 5. In the imaging services kiosk recited in independent claims 8, 10, and  
18 12, the information entered by the customer representative of the customer’s  
19 seating location is “for use in directing the image capturing device toward the  
20 seating location [of the customer].”

21 6. Claims 1, 8, 10, 12, and 16 are the only independent claims and are  
22 reproduced below:

23 1. A method of offering imaging services to a customer, the  
24 method comprising:

25  
26 offering at least one imaging service to a customer for selection  
27 prior to the customer’s attendance at an entertainment event or while  
28 the customer is at the entertainment event;

1  
2 recording an imaging service selected by the customer and  
3 assigning an identification code to the customer selection, said  
4 identification code including at least information on the selected  
5 imaging service and information inputted by the customer on a seating  
6 location of the customer at the entertainment event; and

7  
8 supplying images to the customer based on the selected  
9 imaging service, said images including images of participants in the  
10 entertainment event and images of at least the customer at said seating  
11 location while viewing the entertainment event.

12  
13 8. An imaging service kiosk comprising:

14  
15 an imaging services display section adapted to display a menu  
16 of imaging services to a customer; and

17  
18 a customer input section adapted to permit a customer to select,  
19 either prior to attendance at an entertainment event or while in  
20 attendance at the event, an imaging service from the menu of imaging  
21 services and enter seating information representative of a seating  
22 location of the customer at the entertainment event for use in directing  
23 an image capturing device toward the seating location, such that said  
24 selected imaging service comprises creating images for the customer  
25 which includes at least one image of participants at the entertainment  
26 event and at least one image of the customer while viewing the  
27 entertainment event.

28  
29 10. An imaging service kiosk comprising:

30  
31 an imaging services display section adapted to display a menu  
32 of imaging services to a customer, said imaging services being  
33 associated with an entertainment event which will be attended by the  
34 customer;

35  
36 an image capturing device which is adapted to capture an image  
37 of the customer; and  
38

1 a customer input section adapted to permit the customer to  
2 select, either prior to attendance at an entertainment event or while in  
3 attendance at the event, an imaging service from the menu of imaging  
4 services and enter seating information representative of a seating  
5 location of the customer at the entertainment event for use in directing  
6 the image capture device toward the seating location, such that said  
7 selected imaging service comprises creating a composite image which  
8 includes at least one image of the entertainment event and/or at least  
9 one image of participants at the entertainment event combined with  
10 the customer image captured by the image capture device.

11  
12 12. An imaging services kiosk comprising:

13  
14 an imaging services display section adapted to display a menu  
15 of imaging services to a customer, said imaging services being  
16 associated with an entertainment event which will be attended by the  
17 customer;

18  
19 an image capture device which is adapted to capture an image  
20 of the customer;

21  
22 an input port to permit an uploading of customer digital images  
23 into said kiosk; and

24  
25 a customer input section adapted to permit the customer to  
26 select, either prior to attendance at an entertainment event or while in  
27 attendance at the event, an imaging service from the menu of imaging  
28 services and enter seating information representative of a seating  
29 location of the customer at the entertainment event for use in directing  
30 the image capture device toward the seating location, such that said  
31 selected imaging service comprises creating a composite image, said  
32 composite image including at least one image of the entertainment  
33 event and/or at least one image of participants at the entertainment  
34 event combined with at least one of the customer image captured by  
35 the image capture device or the uploaded digital image.

36  
37 16. A method of displaying images and offering imaging  
38 services to a customer while at an entertainment event, the method  
39 comprising:

1  
2 displaying images to a customer at an entertainment event on an  
3 interactive display screen accessible at a seating location of the  
4 customer, said displayed images comprising at least one of images of  
5 participants in the entertainment event and images of the customer  
6 while viewing the entertainment event; and

7  
8 offering an interactive selection session to the customer to  
9 permit the customer, while seated at the seating location, to select a  
10 desired image or images from the displayed images and select a  
11 desired image product representative of the desired image or images.  
12

13 7. Weston discloses a photo capturing system for a theme park at which  
14 the patrons may order an interactive comic book to be created with their own  
15 images taken at the park, receive a radio frequency identification tag to be carried  
16 on them for automatic tracking purposes as they move around, and be instructed by  
17 a flashing sign or a voice command as they come upon and are detected at various  
18 scenes to stop and take part in a photo-opportunity at the scene. (Weston, col. 5, ll.  
19 25-33).

20 8. Gluck discloses a system and method for producing and distributing  
21 personalized photographic souvenirs for spectators of an event. (Gluck, Abstract,  
22 ll. 1-3).

23 9. Gluck discloses using at least one camera system to take an orderly,  
24 indexed series of photographs of the spectators at the event such that substantially  
25 every spectator will appear in at least one spectator photograph. (Gluck, Abstract,  
26 ll. 7-11).

27 10. In the system disclosed by Gluck, photographic images are regarded  
28 as event souvenirs and are made available for viewing and selection in an  
29 interactive session at several video units located at the event site or a walk-up  
30 window at an assembly site. (Gluck, col. 6, l. 62 to col. 7, l. 5).

1           11.   Shniberg discloses a system and method for providing photographs of  
2   spectators at an entertainment event. (Shniberg, Abstract, ll. 1-3). Each spectator  
3   has an assigned seat and receives a ticket which includes a seat location indicia.  
4   (Shniberg, Paragraphs 58 and 59).

5           12.   In Shniberg's system, any person having access to a spectator's ticket  
6   or who has otherwise received the seat location indicia may view any picture taken  
7   of a spectator located at the indicated seat location by entering a suitable website  
8   and entering the seat location indicia. (Shniberg, Paragraph 61).

9           13.   Also in Shniberg's system, each ticket includes a removable spectator  
10   identifier intended to be transferred by the spectator onto his or her clothing, and a  
11   spectator identifier code corresponds to each spectator identifier. (Shniberg,  
12   Paragraphs 49 and 55).

13           14.   In Shniberg's system, any person who has otherwise received the  
14   spectator identification code may view any picture taken of a spectator wearing a  
15   spectator identifier by entering a suitable web site and then providing the spectator  
16   identification code corresponding to that spectator identifier. (Shniberg, Paragraph  
17   55).

18           15.   In Paragraph 74, Shniberg states:

19                 In accordance with a preferred embodiment of the present  
20   invention, a spectator or any other person having access to ticket 410  
21   or who has otherwise received the identification code 418, such as via  
22   a real time telephone call or any other suitable communication, may  
23   view in real time or thereafter any picture taken of a spectator wearing  
24   a spectator identifier 416 and/or located in a seat location identified  
25   by seat location indicia 412 by entering a suitable web site and then,  
26   typically in response to suitable prompts, entering the spectator  
27   identification code 418, which corresponds to the spectator  
28   identification data provided by the spectator identifier 416 or entering  
29   the seat location indicia 412.

1  
2           16. Showghi discloses a system and method for enabling patrons at large-  
3 scale spectator events at confined venues having identifiable seats to utilize  
4 conventional or special hand-held and wireless communication devices to self-  
5 order food, drink and souvenir items from remote order fulfillment locations  
6 within the venue for delivery to identified seats. (Showghi, Abstract, ll. 1-6).

7           17. Each of the hand-held devices disclosed in Showghi has a display for  
8 presenting a plurality of menus listing items for sale and/or offering services.  
9 (Showghi, col. 2, ll. 6-11).

10           E. Principles of law

11           To establish anticipation under 35 U.S.C. § 102, each and every element in a  
12 claim, arranged as is recited in the claim, must be found in a single prior art  
13 reference. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58  
14 USPQ2d 1286, 1291 (Fed. Cir. 2001). Anticipation can be found when a claim  
15 limitation is inherent or otherwise implicit in the relevant reference. *Standard*  
16 *Havens Products, Inc. v. Gencor Industries, Inc.*, 953 F.2d 1360, 1369, 21  
17 USPQ2d 1321, 1328 (Fed. Cir. 1991). For establishing inherency, that which is  
18 missing in the express description must necessarily be present and would be so  
19 recognized by one with ordinary skill in the art. *Continental Can Co. v. Monsanto*  
20 *Co.*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991).

21           While motivation is necessary to combine teachings, the motivation need not  
22 be expressly stated in any prior art reference. *In re Kahn*, 441 F.3d 977, 989, 78  
23 USPQ2d 1329, 1338 (Fed. Cir. 2006). There need only be an articulated reasoning  
24 with rational underpinnings to support a motivation to combine teachings. *In re*  
25 *Kahn*, 441 F.3d at 988, 78 USPQ2d at 1337. One with ordinary skill in the art is  
26 presumed to have skills apart from what the prior art references explicitly say. *See*



1 *In re Sovish*, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985). A person of  
2 ordinary skill is also a person of ordinary creativity, not an automaton. *KSR*  
3 *International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 82 USPQ2d 1385, 1397  
4 (2007). Rigid rules that deny factfinders recourse to common sense are neither  
5 necessary nor consistent with case law. *Id.* In considering suggestions from the  
6 prior art for determining obviousness, the proper approach is quite flexible and  
7 requires consideration of common knowledge and common sense. *DyStar*  
8 *Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356,  
9 1367, 80 USPQ2d 1641, 1651 (Fed. Cir. 2006).

10 F. Analysis

11 The Anticipation Rejection of Claims 1-7 over Weston

12 The Examiner has determined that the entire theme park of Weston qualifies  
13 as a single entertainment event. (Answer 5, l. 12). The Examiner has also  
14 determined that in Weston each particular location in the theme park where images  
15 are taken of a customer constitutes a seating location of the customer for the  
16 entertainment event. (Answer 6, ll. 17-18). In our view, the broadest reasonable  
17 interpretation of the claim term “seating location of the customer at the  
18 entertainment event” in light of the specification is not broad enough to encompass  
19 the scope attributed to the term by the Examiner.

20 Based on the Applicants’ Specification, the seating location of a customer at  
21 an entertainment event is fixed and determined, not subject to change during the  
22 event and not shared with other customers at the event. It is no different from what  
23 we are all familiar with in the case of concerts and games in professional sports.  
24 The Applicants do not define anything out of the ordinary. As is stated in the  
25 Specification on page 6, lines 4-7:

1 [O]ne method for locating the customer in the stands is through the  
2 use of the customer's ticket which would include a seating location.  
3 This information can be included in an identification code associated  
4 with the customer and be provided to imaging system or controller 15.

5  
6 In the context of the Applicants' Specification, "seating location" must be a  
7 location at which there is a reasonable expectation to find the customer at most  
8 times during the entertainment event if the customer is in attendance at the event.  
9 Also, that seating location is associated with the customer and not shared with  
10 other customers at the event.

11 The photo-opportunity locations in Weston do not qualify as a seating  
12 location for any customer at the theme park because there can be no reasonable  
13 expectation of finding the customer at that "seating location" at most or any  
14 particular time during the entertainment event, i.e., the entire time when the park is  
15 open to patronage, and also because any other customer in the park is free to  
16 occupy that "seating location" at some time during the entertainment event. An  
17 image taken at what the Examiner regards as a customer's "seating location"  
18 during different times of the entertainment event would likely yield an image of  
19 different customers.

20 Accordingly, Weston does not disclose these steps recited in claim 1:

21 (a) recording an imaging service selected by the customer and  
22 assigning an identification code to the customer selection, said  
23 identification code including at least information on the selected  
24 imaging service and **information inputted by the customer on a**  
25 **seating location of the customer at the entertainment event**, and  
26

27 (b) supplying images to the customer based on the selected  
28 imaging service, said images including images of participants in the  
29 entertainment event and images of at least the customer **at said**  
30 **seating location while viewing the entertainment event**. (Emphasis  
31 added.)

1  
2 Claims 2-7 each depend directly or indirectly from claim 1 and thus also include  
3 the same steps as quoted above.

4                                   The Obviousness Rejection of  
5                                   Claims 8-15 over Blank, Gluck, and Shniberg  
6

7           With respect to the imaging service kiosk of claim 8, the Examiner states  
8 (Answer 9, l. 18 to 10, l. 3):

9           Blank **does not expressly disclose** that seating information  
10          representative of a seating location of the customer at an  
11          entertainment event may be entered through the input section, that the  
12          image services comprise at least one image of the participant at the  
13          entertainment event and at least one image of the customer while  
14          viewing the entertainment event, that the imaging service is selected  
15          either prior to attendance at an entertainment event or while in  
16          attendance at the event or **where the seating location of the**  
17          **customer is used in directing an image capture device toward the**  
18          **seating location.** (Emphasis added.)  
19

20          The examiner does not follow up with any statement that Blank either inherently or  
21          implicitly disclose any of the features that it does not expressly disclose.

22          Accordingly, the above-quoted text is taken as meaning that Blank does not  
23          disclose the enumerated features, expressly, implicitly, or inherently.

24          To make up for some of the above-noted deficiencies of Blank, the  
25          Examiner relies on the teachings of Gluck. But even the Examiner has recognized  
26          that Gluck does not teach the claim element of “where the seating location of the  
27          customer is used in directing an image capture device toward the seating location.”

28          For that claim feature, the Examiner relies on the teaching of Shniberg.

29          In that regard, the Examiner states (Answer 11, l. 17 to 12, l. 7):

30                       Further in analogous art, **Shniberg** discloses, in Fig. 1, 4 and 6,  
31          an imaging service offered to a customer, which takes images of the  
32          customer at a seating location and where the seating location of the

1 customer is used in directing an image capture device toward the  
2 seating location. More specifically, **Shniberg** discloses an imaging  
3 service offered to a customer (paragraph 46 and 80), which takes  
4 images of the customer at a seating location (paragraph 47, 49 and 59)  
5 and where the seating location of the customer is used in directing an  
6 image capture device toward the seating location (paragraph 74 and  
7 75; where a person with access [to] the website enters the  
8 customer[']s seating location to see a real time picture of the  
9 customer; to get a real time picture a camera must be directed towards  
10 the seating location of the customer, this is done in response to the  
11 seating location, which was enter[ed] via the website). Therefore,  
12 Shniberg teaches where the seating location of the customer is used in  
13 directing an image capture device toward the seating location.  
14 [Emphasis in original.]  
15

16 The circumstance is similar with regard to independent claims 10 and 12,  
17 each of which recites that entered seating information representative of a seating  
18 location of the customer at the entertainment event is for use in directing the image  
19 capture device toward the seating location. The examiner relies on Shniberg's  
20 Paragraphs 74 and 75 as disclosing that feature. (Answer 15, l. 20 to 16, l. 13; 20,  
21 ll. 8-20).

22 In Paragraph 74, Shniberg states that in a real time telephone call or any  
23 other suitable communication one desiring a picture of a spectator and having  
24 access to a suitable website receives the spectator identification code. The "real  
25 time" characterization of the communication does not have anything to do with  
26 when images of the customer are taken.

27 In Paragraph 74, Shniberg states that one requesting a picture "may view **in**  
28 **real time** or thereafter [emphasis added]" any picture taken of a spectator having a  
29 corresponding identification code or sitting at a corresponding seat. We take  
30 official notice that in the context of some action being taken relative to something  
31 else, "real time" has a conventional meaning in the English language that means

1 practical simultaneity. To one with ordinary skill in the art, unless demonstrated  
2 otherwise by the Applicants, viewing in real time a picture taken can have no  
3 reasonable meaning other than seeing a picture practically simultaneously with the  
4 taking of the picture, i.e., essentially at the same time. That is also the Examiner's  
5 rationale, as the Examiner explained that in order to view in real time a picture  
6 taken of a spectator, the camera would necessarily have to be directed to the proper  
7 seat location based on entry of the seating location indicia, in order to take a  
8 picture for viewing in real time.

9 Citing Paragraph 72 of Shniberg, the Applicants argue that in Shniberg  
10 pictures are taken continuously throughout the event without regard to entry of any  
11 spectator's identification code or seat location. Paragraph 72 of Shniberg is  
12 reproduced below:

13 In accordance with a preferred embodiment of the present  
14 invention, the spectator removes the removable spectator identifier  
15 416 from the ticket and adheres it to his outer clothing. The spectator  
16 is photographed wearing the spectator identifier 416, while in an  
17 arena or other suitable location, preferably by one or more static  
18 cameras 420 and/or by one or more moving cameras 422. Any  
19 suitable type of photography may be employed such as still  
20 photography, video photography and both digital and analog media  
21 may be employed.  
22

23 We agree that in the embodiment as described above, it appears that a spectator's  
24 seat number entered through a website would not be used to direct the movement  
25 of any imaging device. However, the embodiment according to Paragraph 72 is  
26 not the part of Shniberg's disclosure relied on by the Examiner. The Examiner  
27 relied on the embodiment of Shniberg described in Paragraph 74, particularly the  
28 portion about viewing images in real time as discussed above.

1 In the reply, the Applicants argue that in Paragraph 74 of Shniberg viewing  
2 images “in real time” must mean viewing images in the same session as the earlier  
3 referenced “real time telephone call or any other suitable communication” (Reply  
4 Br. 8). According to the Applicants, both instances of “real time” in Paragraph 74  
5 refer to the telephone call or other suitable communication during which the  
6 spectator identification code is provided to the person desiring to view pictures.  
7 The position is not understood. For some reason, the Applicants regard “real time”  
8 as a particular time period rather than a limitation specifying practical  
9 simultaneity. We reject the Applicants’ contention that in Paragraph 74 of  
10 Shniberg, the second instance of “real time” refers to the same time period as the  
11 first instance of “real time.” Neither instance of “real time” refers to a particular  
12 time period. Instead, the first instance of “real time” is concerned with  
13 communication and indicates that the communication does not involve delay or the  
14 taking of messages, and the second instance of “real time” indicates that the image  
15 is viewed practically simultaneously as it is taken. The first instance of “real time”  
16 relates to a communication during which a spectator identification code is provided  
17 to someone who may want to use it on a web site to view desired images. The  
18 second instance of “real time” relates to a viewing of images some time after the  
19 communication during which the spectator identification code was provided.

20 The Applicants have not addressed the Examiner’s view with regard to the  
21 reading by one with ordinary skill in the art of Shniberg. The Applicants have not  
22 submitted the testimony of any technical witness regarding how one with ordinary  
23 skill in the art would read the disclosure of Shniberg and whether that would  
24 contradict the Examiner’s finding and rationale. More importantly, it is noted that  
25 according to Shniberg’s Paragraph 74 the telephone or other type of  
26 communication is not even necessary for someone who already has access to ticket

1 410. According to Shniberg's Paragraph 74, someone who already has access to  
2 ticket 410 need not be involved in any communication and may simply enter at the  
3 web site the seat location indicia 412 on ticket 410. That alone refutes the  
4 Applicants' argument that in Paragraph 74 of Shniberg, "real time" means that the  
5 images are viewed during the communication session in which the spectator  
6 identification code is provided from the spectator to the person with access to the  
7 web site. The indefinite reference to "any picture taken of a spectator" is also not  
8 inconsistent with directing movement of the camera to the proper seat location in  
9 response to the seat location indicia provided, because the spectator is not  
10 necessarily always located at his or her assigned seat if and when the image  
11 capturing device has been directed to the spectator's assigned seat.

12 The Applicants point out that a reference must be read for all that it teaches.  
13 That is true. The embodiment described in Shniberg's Paragraphs 74 and 75  
14 cannot be ignored on the ground that other embodiments disclosed in Shniberg do  
15 not involve real time viewing of images taken of a spectator. The Applicants argue  
16 (Reply Br. 9) that because there are unlikely to be sufficient cameras in football  
17 stadiums to view every single person simultaneously, the Shniberg system cannot  
18 possibly accommodate web-user driven imaging in real time of every single  
19 spectator. The argument is misplaced, as Shniberg is a publication and not an  
20 actual system in usage, and because Applicants' claims do not require an ability to  
21 direct the image capture device to every single seating location, without exception.  
22 Even if Shniberg's system cannot implement real time imaging of every single  
23 spectator at an event, there is still no merit to the Applicants' argument.

24 The Applicants also argue that the reference in Shniberg to real time  
25 viewing of any picture "taken" is expressed in the past tense and therefore not  
26 really in real time with respect to the taking of the picture. The argument is

1 rejected because as a scientific fact something cannot be viewed before it is  
2 created. A picture is always viewed after it is taken, including the case of viewing  
3 a picture in real time. The use of the form “taken” is not inconsistent with viewing  
4 images in real time. Only practical simultaneity is required by the “real time”  
5 recitation in the claim.

6 The Applicants also argue that neither Gluck nor Shniberg discloses or  
7 suggests selecting an image service “prior to” attendance at an event. The  
8 argument is misplaced because claims 8, 10, and 12 are all sufficiently broad to  
9 cover the case of selecting an imaging service while in attendance at the event.

10 For the foregoing reasons, the Applicants have shown no error in the  
11 Examiner’s determination that Paragraph 74 of Shniberg discloses to one with  
12 ordinary skill in the art that seating location indicia is used to direct the image  
13 capture device toward a spectator’s seating location.

14 The Applicants do not separately argue the merits of dependent claim 9 from  
15 that of claim 8 and the merits of dependent claim 11 from that of claim 10.  
16 Accordingly, claim 9 stands and falls with independent claim 8 and claim 11  
17 stands and falls with independent claim 10.

18 As for claims 12-15, the Applicants rely on the same arguments and  
19 contentions presented with regard to claims 8-11 and an additional argument  
20 (Appeal Br. 11) that claims 12-15 further require “forming a composite image  
21 including at least one image of the entertainment event or participants therein  
22 **combined with at least one customer image captured by an image capture**  
23 **device or an uploaded digital image**” (Emphasis added). The Applicants argue  
24 that the Examiner’s reliance on the disclosure in Blank of an input port through  
25 which captured video images are uploaded is insufficient because “Appellants’



1 invention is directed to uploading of still images from a digital or hybrid camera”  
2 (Appeal Br. 11, ll. 22-23).

3 For several reasons, the Applicants’ additional argument with respect to  
4 claims 12-15 is misplaced and insufficient. First, the corresponding claim  
5 language in claims 12-15 at issue here is “digital image” and that term is broad  
6 enough to encompass both digital video images and digital still images. The  
7 limitation argued by the Applicants, uploading of still images, is not required by  
8 the claims. Secondly, the Examiner explained (Answer 30, ll. 8-11) that Blank  
9 discloses capturing video images via a frame grabber interface or capture board  
10 912 and further discloses that the frame grabber 912 is optionally connected to  
11 video sources such as a video camera 914 or a “still video” camera 920.  
12 According to the Examiner, uploading images from a still video camera is the  
13 same as uploading still images. The Applicants have not specifically addressed the  
14 rationale as stated by the Examiner. Thus, no error has been shown in that regard.  
15 Finally, it is noted that the addition of a limitation that begins with the disjunctive  
16 “or” adds no real further limitation to a claim. Claim 10 already recites the  
17 creation of a composite image which includes at least one image of the  
18 entertainment event and/or one image of the participants at the event, combined  
19 with a customer image captured by the image capturing device. The addition in  
20 claim 12 of an alternative, i.e., something uploaded, does not provide a further  
21 limitation as compared to the corresponding element in claim 10. The second  
22 image source for forming a composite image as specified in claim 12 is broader  
23 than that as required by claim 10.

The Obviousness Rejection of Claim 16  
over Blank, Gluck, and Showghi

Claim 16 requires the step of offering an interactive selection session to the customer to permit the customer, while seated at the seating location, to select a desired image or images from displayed images and select a desired image product representative of the desired image or images. Per another step in claim 16, the displayed images have to be on an interactive display screen accessible at the seating location of the customer. None of Blank or Gluck, as applied by the Examiner, discloses these features. In Gluck, a customer does not have an option to make image selection while located at his or her assigned seat. Instead, an interactive selection is made available at video units located throughout the venue (Gluck, col. 6, ll. 62-65) or a walk-up window at an assembly site preferably at the event venue (Gluck, col. 7, ll. 2-5). Blank does not even disclose an entertainment event with spectators viewing the event at a venue. The Examiner determined that in Gluck there are locations in the entertainment venue where images are displayed to the spectators and that such locations are in relative proximity to the seating locations of the spectators. (Answer 23, l. 17 to 24, l. 3). But the Examiner has not determined that such proximate locations of display satisfy the claim requirement of displaying images on a screen “accessible at a seating location of the customer” (Answer 24, ll. 10-14).

The Examiner determined and the Applicants do not dispute that Showghi discloses an entertainment event at which patrons have identified seats, that the patrons have the option of being provided special hand-held electronic devices which can be used, while the patrons are located at their seats, to order food, drinks, and other event souvenirs to be delivered to their seats. The Examiner determined and the Applicants do not dispute that the hand-held devices include a

1 display on which various menus of items offered for sale by the event venue are  
2 presented. Showghi even discloses displaying hierarchical multi-level menus.  
3 (Showghi, col.5, ll. 40-48).

4 The Examiner combined the teachings of Showghi with those of Blank and  
5 Gluck to meet all the requirements of claim 16. According to the Examiner,  
6 because Showghi discloses that a listing of event souvenirs may be presented on  
7 the special hand-held device for ordering by patrons, and because Gluck discloses  
8 that at an entertainment event images of spectators at their seating locations can  
9 constitute a desirable event souvenir, it would have been obvious to one with  
10 ordinary skill in the art to add interactive souvenir image selection to the functions  
11 supported by Showghi's special hand-held units.

12 The Applicants argue (Appeal Br. 13, ll. 28-32):

13 There is no disclosure or suggestion that a customer can use such a  
14 device to view images of the participants in the entertainment event or  
15 of the customer viewing the event, or to select a desired image or  
16 images, or to select a desired image product representative of the  
17 desired image or images as set forth in claim 16.

18  
19 The argument is unpersuasive. The Examiner need only articulate a rational basis  
20 why one with ordinary skill in the art would have known to add imaging products  
21 or services like those offered in Gluck at a work station to the souvenir offerings  
22 provided by the special hand-held devices of Showghi. And he did. The Examiner  
23 relied on the souvenir image selection session of Gluck, for implementation on the  
24 hand held devices of Showghi. The hand-held devices of Showghi are described in  
25 Showghi as being useful for ordering food, drinks and souvenirs and Gluck  
26 discloses that images of the patrons at the entertainment event are souvenirs that  
27 may be displayed to patrons for selection and purchase.

We note further the following discussion in Showghi, which supports the Examiner's reasoning for displaying graphical images on hand held units such as those disclosed in Showghi for selection by the patrons (Showghi, col. 7, ll. 23-29):

As is well understood by those skilled in the art, the simple menu system as portrayed in FIG. 4 relates to the limited display capabilities on today's mini-browser cellular telephones and related devices. However, as time moves on, much higher text densities, graphics, and even color will become common place and represent only the natural evolution of the method of this invention.

The description plainly indicates that displaying graphical images on the hand-held units are within the realm of invention as contemplated by Showghi. That suggestion, coupled with Gluck's teaching that images of the patrons at an entertainment event can be souvenirs, provides ample basis for the Examiner's stated combination of the teachings of Gluck and Showghi.

## Conclusion

The rejection of claims 1-7 under 35 U.S.C. § 102(e) as anticipated by Weston is **reversed**.

The rejection of claims 8-15 under 35 U.S.C. § 103 as unpatentable over Blank, Gluck, and Shniberg is **affirmed**.

The rejection of claim 16 under 35 U.S.C. § 103 as unpatentable over Blank, Gluck, and Showghi is **affirmed**.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART

sd

Appeal 2007-2215  
Application 09/918,287

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